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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 PATRICIA PHILLIPS, an individual,
10 Plaintiff,

11 vs.

12 PERFUSION.COM, INC., a foreign
13 corporation.

14 Defendant.

CASE NO: 3:20-cv-619-RCJ-CLB

STIPULATED PROTECTIVE ORDER
Regarding

CONFIDENTIALITY OF DOCUMENTS
PRODUCED IN LITIGATION

16 Pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 26(f) and U.S. District Court of
17 Nevada Rule (“Local Rule”) 26-1(a), the parties through their respective counsel, hereby submit the
18 following *Stipulated Protective Order*.

19 I. RECITALS

20 WHEREAS: the parties to the above-captioned litigation anticipate that discovery will require
21 the parties to disclose records and information that are confidential and sensitive; such records are
22 anticipated to include the parties’ private employment records, employment records for non-party
23 employees or former employees of Defendant, sensitive business information including but not limited
24 to competitive trade information of Defendant, or any other personally identifiable information subject
25 to protection under the Federal Rules of Civil Procedure, Federal law, or Nevada law (“Confidential
26 Information”); and

27 WHEREAS: the parties seek to protect and prevent the improper dissemination of such
28 “Confidential Information” to third parties, during the course of litigation and after the litigation has

ended;

II. STIPLUATION

THEREFORE: the parties, by and through their respective counsel of record, hereby stipulate and request the Court issue an Order (“*Stipulated Protective Order*”), protecting the confidential nature of certain records and information as may be produced during the course of the above-captioned matters, as follows:

1. If any person or entity, whether or not a party to the instant action, produces or receives answers to interrogatories, or documents or other things, which the producing or receiving person or entity considers to be “Confidential Information,” as defined herein in § II(3)(A)(I) *infra*; or

2. If there is deposition testimony which any person or entity, whether or not a party to the instant action, believes contains “Confidential Information,” as defined herein in § II(3)(A)(I) *infra*; or

3. Third parties produce information which the third-parties assert is confidential, the following procedure shall govern pursuant to Fed. R. Civ. P. 26(c) *et. seq.*:

A. Any documents (and the contents thereof), things or information falling within the definition of “Confidential Information,” set forth herein in § II(3)(A)(I) *infra*, that are produced may be designated and marked, in whole or in part, without regard to whether redactions are made, “Confidential” by the party producing the documents or information, at the time the documents are delivered to or made available for inspection by any party;

I. “Confidential Information” is defined herein as: (a) employment records of any employees or former employees of any party; (b) confidential notes, memoranda, and statements regarding non-party employees; (c) confidential information concerning the discipline and/or termination of non-party employees and former employees; (d) the production of information or documents proprietary to any party, including by way of example and not limitation, tax records, financial statements; (e) other private information of any party or non-party to the present litigation, including consumer records, *e.g.*, phone bills; (f) financial records and business records of any person or entity, whether a party or non-party to the present litigation; (g) medical records or protected health information, including medical bills and psychological records, and medical information of any person, whether a party or non-party to the present litigation; (h) investigatory materials which may otherwise

1 be declared confidential by law; or (i) sensitive business information, including but not limited to
2 competitive trade information, of any party or non-party to the present litigation.

3 B. If a party produces to another party items that contain Confidential Information
4 as defined above, that party may designate one or more documents, or a portion of a document, as
5 “Confidential” before producing that document to the other party. Such designation shall be made by
6 marking, stamping or typing the word “Confidential” on each page of the document at the time it is
7 produced to the receiving party’s counsel;

8 C. Any party may designate deposition testimony as “Confidential” by orally
9 making such a designation on the record either at the commencement of the deposition, at the time the
10 testimony is given, and/or before the end of that day's questioning. Following such a designation, the
11 court reporter shall mark “Confidential” on the transcript or the portion thereof containing the
12 “Confidential” testimony;

13 D. In addition, documents or items produced by one party may be designated
14 “Confidential” by the other party, *i.e.*, the receiving party, by:

15 I. marking the document, in whole or in part, “Confidential” in the same
16 manner as stated above; and

17 II. then forwarding a copy of the marked document back to the producing
18 party;

19 E. In this regard, the receiving party seeking the “Confidential” designation may
20 designate, by number, each document it believes should be “Confidential”;

21 F. If the receiving party has no objection to the “Confidential” designation made by
22 the producing party, the receiving party may either expressly notify the producing party or allow the ten
23 calendar-day objection period (set forth below) to lapse. Where there has been no written objection
24 made, once a document or item has been produced and designated as provided herein to the receiving
25 party, the document or item shall be treated as “Confidential,” respectively, pursuant to this *Stipulated*
26 *Protective Order*, until further order of the Court;

27 4. The following protocol shall apply in the event of an objection to a designation of
28 “Confidential”:

1 A. If there is an objection to the “Confidential” designation, the party so objecting
2 must notify the other party in writing of both the objection and the grounds for the objection within ten
3 (10) calendar days from the date the designation was made or the document(s)/item(s) received,
4 whichever is later, and the procedure herein in § II(4)(B) *infra*, shall apply;

5 B. If the parties do not agree that the documents, information or testimony should
6 be treated as confidential, the parties shall attempt to resolve the issue by meeting and conferring. If a
7 resolution does not occur, either party may file a motion with the Court to resolve the dispute. Such
8 motion must be filed within thirty (30) calendar days of receipt of the written objection to the
9 designation, unless stipulated otherwise by counsel. If an objection has been raised, the documents,
10 testimony and/or information at issue shall be governed by §§ II (3)(A)-(F), inclusive, of this *Stipulated*
11 *Protective Order*, and treated and regarded as “Confidential” from the date of disclosure and/or
12 production until the dispute is resolved informally by the parties or a final order is issued by the Court
13 resolving the dispute. In the event of such motion, the parties having entered into this *Stipulation* and
14 the existence of the Court's *Order* entered thereon shall not affect the burden of proof on any such
15 motion, nor impose any burdens upon any party that would not exist had this *Stipulated Protective*
16 *Order* not been entered;

17 5. A document or testimony, or portion, summary, or abstract thereof, that is to be treated
18 “Confidential” pursuant to this *Stipulated Protective Order* shall not be disclosed to, revealed to or
19 discussed with any persons other than the parties, counsel of record for the parties, attorneys, legal
20 assistants and clerical personnel employed by them, and other persons to whom disclosure is necessary
21 for the purposes of this litigation. (This allows disclosure to the officers, directors, employees or former
22 employees of the parties, persons requested by counsel for any party to furnish technical or expert
23 service or to give expert testimony with regard to the subject matter of the document(s), item(s) or
24 expert testimony for the trial of this action). However, each such person to whom a party makes such
25 disclosure shall read this *Stipulated Protective Order* and acknowledge in writing that he/she is fully
26 familiar with the terms hereof and agrees to comply with, and be bound by, this *Stipulated Protective*
27 *Order* until modified by either further order of the Court or agreement of all the affected parties;

28 6. Anyone seeking to file any “Confidential” documents, testimony, or information or any

1 pleadings or memorandum purporting to reproduce or paraphrase all or any portion of such confidential
2 material with this Court must first attempt to make such filings confidentially, by seeking to obtain
3 prior leave of Court for filing the same under seal. Notwithstanding any agreement among the parties,
4 the party seeking to file a paper under seal bears the burden of overcoming the presumption in favor of
5 public access to papers filed in Court. Any motion regarding filing confidential information and
6 motions to seal shall comply with LR IA 10-5 and the requirements of *Kamakana v. City and County of*
7 *Honolulu*, 447 F.3d 1172 (9th Cir. 2006). *See also, Center for Auto Safety v. Chrysler Group, LLC*,
8 809 F.3d 1092, 1097 (9th Cir. 2016). NOTE: If the document is filed electronically, the appropriate
9 protocol for that purpose will be utilized;

10 7. If such application for leave of Court to file any document(s) under seal is denied, then
11 the party who sought leave will be relieved, in that instance only, and only as to such documents for
12 which leave of Court was denied, from complying with this stipulation in relation to that filing;

13 8. Any documents, testimony, and/or information that has been rendered “Confidential”
14 under the parties’ *Stipulated Protective Order* and any other information produced or exchanged in the
15 course of this case (other than information that is publicly available) is to be used only in the above-
16 captioned action, and may not be used in any other action or for any other purpose unless the party
17 seeking to make such use has acquired the documents, testimony, and/or information from a source
18 independent of the above-captioned action;

19 9. Within forty-five (45) calendar days of the entry of the final order concluding this
20 judicial proceeding, all “Confidential” documents or things; any copies, summaries, and abstracts
21 thereof; or notes relating thereto, shall be returned to the producing party or destroyed by the receiving
22 party (including by being shredded), at the option of the receiving party, with proof or attestation of
23 such destruction of records being transmitted by the receiving party to the producing party, except as
24 otherwise ordered by the Court or stipulated in writing by the parties. Counsel of record shall obtain
25 return of such information, things, and/or documents from any person to whom that counsel has made
26 available the documents or information produced by the other party designated as “Confidential.”
27 Notwithstanding any other language contained in this *Order*, each party’s counsel of record shall be
28 allowed to retain for its files a copy of all pleadings, motions, exhibits, or other papers filed and/or

1 lodged with the Court, and of all documents designated by both parties or any non-party as
 2 “Confidential” and/or summaries or abstracts thereof (including but not limited to documents of any
 3 type prepared by a party and/or counsel that are subject to the attorney-client privilege and/or the
 4 attorney work-product doctrine). All such documents and information retained by counsel of record
 5 must be maintained in a confidential manner and used only in accordance with this *Order*.

6 10. This *Stipulated Protective Order* may be amended, without prior leave of the Court, by
 7 the agreement of counsel for the parties in the form of a stipulation and order that shall be filed in this
 8 case. Nothing herein shall be construed so as to prevent any party from seeking relief from this *Order*
 9 at any time;

10 11. The terms of this *Stipulated Protective Order* do not preclude, limit, or otherwise apply
 11 to the use of documents at trial;

12 12. Nothing herein shall be deemed to waive any applicable privilege or work product
 13 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure or material
 14 protected by privilege or the work product doctrine;


15 13. Any witness or other person, firm or entity from which discovery is sought may be
 16 informed of and may obtain the protection of this *Stipulated Protective Order* by written advice of the
 17 parties’ respective counsel or by oral advice at the time of any deposition or similar proceeding; and

18 14. The parties reserve their rights to assert the confidentiality of documents and
 19 information produced irrespective of their production pursuant to this *Stipulated Protective Order*.

20 Dated: March 26, 2021

THE GEDDES LAW FIRM, P.C.

21 By:


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1 Dated: March 26, 2021

LEMONS, GRUNDY & EISENBERG

2 *Electronic Signature Authorized*

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15 **ORDER**

16 THE COURT, having considered the preceding *Stipulation* and good cause appearing therefor,
17 HEREBY GRANTS the relief and protections requested therein. IT IS HEREBY ORDERED that the
18 preceding *Stipulation* and this *Stipulated Protective Order* shall be and remain in effect, as stipulated
19 therein.

20 **IT IS SO ORDERED.**

21 DATED: March 30, 2021

22 The court's jurisdiction over this protective order
23 shall cease upon termination of this case.

24 
25 **UNITED STATES MAGISTRATE JUDGE**